IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr. Appeal No. 572 of 2000

Date of Decision : 22.10.2007

State of H. P. …Appellant.

Versus:

Satya Devi …Respondent.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. V. K. Verma, Addl. A. G.

For the respondent : Mr. Ajay Sharma, Advocate.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 11.4.2000 passed by the Judicial Magistrate Ist Class (II), Dharamshala, Distt. Kangra, in Criminal Case No. RBT 78-II/99, titled as State v. Satya Devi, acquitting the accused of the charged offence under sections 325 & 506 of the Indian Penal Code.

As per the case of the prosecution, on 16.1.1999, at about 10 A.M., Smt. Nisha Devi , daughter-in-law of complainant Smt. Banko Devi, was smearing the court-yard of her house then the accused came and threw a bucket of water and washed the

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

same. Smt. Kunta Devi, Ward Panch was called by the complainant and when the complainant inquired from the accused as to why she had thrown the water, the accused gave a blow of danda on her head and nose. The report (Ext.PW-7/A) was lodged with the Police Station, Dharamshala, on the basis of which FIR No. 21/99 dated 21.1.1999 (Ext.PW-9/B) under Sections 325, 506 IPC was registered in Police Station, Dharamshala. The complainant got herself medically examined and her medico legal certificate Ext.PW-1/A and X-Ray Ext.PW-8/B was taken by the police. The complainant sustained hair line facture on her nasal bone. The investigation was completed and the rough site plan Ext.PW-9/A was prepared and the Danda (Ext.P-1) and Dupatta (Ext.P-2) vide seizure memo (Ext.PW-2/A & Ext.PW-2/B respectively) were also taken into possession. With the completion of the investigation, the challan was presented in the Court for trial.

The provisions of Section 207 Cr.PC, were complied with and the accused was charged for an offence u/s 325 IPC to which she did not plead guilty and claimed trial. In order to prove its case, the prosecution examined 9 witnesses and statement of the accused u/s 313 Cr.PC was also recorded.

After perusing the material on record including the deposition of the witnesses, the Court below held that the prosecution had failed to prove its case beyond doubt and there were material contradictions in the statements of the witnesses

and also the recovery of Ext.P-1 was not effected in the presence of the witness.

I have perused the record and also the depositions of the witnesses. Through the statements of Smt. Savitri Devi (PW-3), Smt. Sandhya Devi (PW-4), Smt. Kunta Devi (PW-5) & Smt. Nisha Devi (PW-6), it is clear that the Court-yard where Smt. Savitri Devi was working is jointly owned and used by the complainant and the accused. Further, as per the version of Smt. Savitri Devi (PW-3), there is long pending litigation inter se between the accused and the complainant with regard to the said Court-yard. Smt. Kunta Devi (PW-5), Ward Panch, has testified that when she reached the spot both the complainant and the accused were fighting against each other and she intervened and separated both of them. She has however not deposed that the accused had given a blow with danda Ext.P-1 on the head of the complainant.

The statements of PW-6 & PW-2 do not inspire confidence. Whereas PW-6 has stated that Smt. Banko Devi (PW-2) was present at the time when scuffle took place between the two parties, on the other hand, PW-2 is totally silent about the presence of PW-6. Smt. Sandhya Devi (PW-4) who is the witness to the recovery memo Ext.PW-2/A has stated that the police had brought the danda from the house of the accused and the same was not recovered in her presence. To this extent

statement of ASI Vidya Thakur (PW-9) has been contradicted by PW-4.

Complainant Smt. Banko Devi (PW-2) has deposed that she suffered an injury and the blood started oozing. The medico legal certificate on record falsifies the same. There is no recovery of blood. The report does not even mention it. Both Dr. Amrjit Dadwal (PW-1) and Dr. R. K. Mahajan (PW-8) have testified with regard to the injury suffered by the complainant. However, PW-1 has admitted that the injury could have been caused by falling on hard surface.

Admittedly, the parties have been litigating and there is a dispute with regard to the Court-yard. It has come on record through the statement of PW-2 as also PW-3 that there are houses belonging to many other persons but none of the neighbours, who could have revealed the truth as independent witnesses have been associated by the Investigating Agency or examined in the Court by the prosecution. There is no explanation forthcoming for the same. Smt. Kunta Devi (PW-5), Ward Panch, has not supported the case of the prosecution at all and the statement of the other ocular witness do not inspire confidence.

In my view, the Court below has correctly appreciated the evidence on record and come to the conclusion that none of the witnesses has been able to prove the guilt of the accused beyond reasonable doubt.

I see no reason to interfere with the findings and conclusions of the Court below and the appeal is accordingly dismissed. Bail bonds stand discharged.

(Sanjay Karol), J.

October 22, 2007
(rana)